IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3211 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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VAJESANG JALUBHAI DABHI - Petitioner(s)

Versus

ADMINISTRATIVE OFFICER & 2 - Respondent(s)

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Appearance :
MR GUNVANT R THAKAR for Petitioner(s) : 1,
MS RITA CHANDARANA AGP for Respondent(s) : 1,
MR DG CHAUHAN for Respondent(s) : 2,
NOTICE NOT RECD BACK for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 21/02/2006

ORAL JUDGMENT

1. Invoking Article 226 of the Constitution, the petitioner has moved this Court with the prayers to direct the respondents to condone the break of 91 days in his service which was occasioned in the year 1988, between 27.7.1988 and 25.10.1988, and to direct

payment of all retiral benefits revised on the basis of continuity of service without the aforesaid break.

2. There was no dispute about the fact that the service of the petitioner under the respondent was interrupted for the aforesaid period, but it was the case of the petitioner that termination of his service on 27.7.1998 was illegal and that some other co-employees were continued in service at that time. Therefore, the respondents were, by order dated 10.1.2006, directed to file affidavit-in-reply explaining as to how the termination order dated 26.7.1988 was legal and effective.

3. By filing an affidavit-in-reply of the Registrar of the University, it is stated that appointment of the petitioner was governed by the terms and conditions contained in the letter of appointment and it was liable to be terminated by notice only. However, the petitioner was paid retrenchment compensation and notice pay in accordance with the provisions of the Industrial Disputes Act, 1947 and that termination was never challenged by the petitioner. The other objection of laches and delay of 17 years in filing of the petition is also voiced in the affidavit.

4. In the above facts and circumstances, the petitioner has, in his affidavit-in-rejoinder,

admitted and his learned counsel has fairly conceded that termination of his service was brought about, as stated by the respondent. Therefore, the petitioner sought to fall back upon the only argument that some other similarly situated employees were continued in service in the year 1988 while break was brought about in the continuity of his service. Obviously, it is too late in the day for the petitioner to contend in the year 2005 that the valid and unchallenged order terminating his service in the year 1988 was bad for being discriminatory or arbitrary or that it was accepted under some inducement or duress. Besides that, it is recently held by the Division Bench of this Court in ***UNION OF INDIA & ANR. v. N.M.DHOBI [2006 (1) GLR 82]*** that, once the order of reappointment was accepted by the employee and he had resumed his duties without any protest and enjoyed the benefits flowing from such order, he was estopped from claiming continuity of service and other consequential benefits.

5. In the facts and for the reasons discussed hereinabove, the petition fails and is accordingly rejected. Rule is discharged with no order as to costs.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)